REMARKS

Reconsideration of the rejection of claims 25 and 43-48 is respectfully requested in view of the following remarks.

Claim Status

As noted above, no claim amendments are being made herein. However, all presently pending claims are set forth above for the Examiner's convenience.

Independent method claim 22 and dependent claim 42 have been allowed. Independent claim 22 is directed toward a method for treating diabetic neuropathy by administering an effective amount of the statin drug (E)-7-[4-(4-fluorophenyl)-6-isopropyl-2-[methyl(methylsulfonyl)amino] pyrimidin-5-yl] (3R,5S)-3,5-dihydroxyhept-6-enoic acid or a pharmaceutically acceptable salt thereof (hereinafter the "Agent"). Allowed dependent claim 42 recites that the Agent is in the form of a calcium salt.

Dependent claims 25 and 43-48 are currently rejected.

Claim Rejections – 35 USC § 103

Dependent claims 25 and 43-48 have been rejected as being obvious over Ikeda '295. The rejected claims, being dependent on allowed claim 22, are also directed toward a method for treating diabetic neuropathy by administration of a treatment-effective amount of the Agent, and additionally provide for the co-administration of at least one other drug used for treating diabetes or the complications of diabetes.

In making the rejection, the Examiner notes at the top of page 3 of the Action that Ikeda teaches compositions "comprising sensitivity enhancer in combination with other antidiabetic compounds such as a statin compound for the treatment of diabetic complications." He further notes that the Ikeda disclosure at column 17, lines 48-54, states that the diabetic complications include diabetic neuropathy, and that the insulin sensitivity enhancer of Ikeda can be one or more of the other drugs claimed in present claims 25 and 43. The instant invention is said to differ from the cited reference in that "the cited reference does not teach the applicants' preferred statin compound or statin drug [in] combined with the other antidiabetic drugs." Nevertheless, the Examiner concludes that "one skilled in the art would have been motivated to substitute one statin compound for another statin compound and achieve the same results in the absence of evidence to the contrary."

This ground for rejection is respectfully traversed.

First of all, it must be recognized that the present claims are directed toward a method for the treatment of diabetic neuropathy by administration of "a treatment-effective amount" of the Agent. Thus, the specification teaches that the Agent is effective in the treatment of diabetic neuropathy, and the claims require that the Agent be present in an amount sufficient to effect that treatment, whether or not a second drug is present. The further drugs that may be administered with the Agent are generally described and claimed as drugs which are used "for treating diabetes or the complications of diabetes." However, such other drugs need not, but may, also be effective in the treatment of diabetic neuropathy. Thus, the essential requirement of each claim is that the Agent be present in an amount that is effective for the treatment of diabetic neuropathy, whether or not any other drug is present, and whether or not any other drug that is present is itself effective in the treatment of diabetic neuropathy.

In contrast to the present disclosure and claims, there is no teaching or suggestion in Ikeda that any statin (no less the Agent) is effective in the treatment of diabetic neuropathy. Rather, the only disclosure in Ikeda which suggests any particular purpose for the inclusion of a statin in its composition is at column 11, lines 45-49, wherein the statin compounds are characterized only by their well established effectiveness in "lowering blood cholesterol levels by inhibiting hydroxymethylglutalyl CoA (HMG-CoA) reductase." No other function or effectiveness is ascribed to the statin component that may be in the Ikeda composition. In fact, at column 12, lines 23-26, it is noted that "the above-mentioned statin compounds, squalene synthesis inhibitors, fibrate compounds and LDL catabolism enhancers *can be substituted with other drugs having the property to lower blood cholesterol and triglyceride levels*" (emphasis added).

In particular, there is no disclosure or suggestion in Ikeda that the statin component plays any role whatsoever in the treatment of diabetic neuropathy. Rather, as made clear in the claims, it is the "insulin sensitivity enhancer" that must be present in a therapeutically effective amount, to effect the general treatment of "diabetic complications." The only support provided in Ikeda for the effectiveness of *any* disclosed combination is the combination of pioglitazone hydrochloride with an α-glucosidase inhibitor (voglibose) in Example 1, demonstrating a lowering of both blood glucose and hemoglobin A_1 levels; and the combination of pioglitazone hydrochloride with an insulin secretion enhancer (glibenclamide) in Example 2, demonstrating an inhibition of blood sugar following glucose loading. There is no such demonstration that *any* combination disclosed in Ikeda is effective in the treatment of the specific diabetic complication of "diabetic neuropathy," no less a combination of the insulin sensitivity enhanser with a statin. Most particularly, there is no

suggestion in Ikeda that a statin compound would contribute to the treatment of diabetic neuropathy.

Thus, contrary to the Examiner's assertion, Ikeda neither teaches nor suggests that a statin might itself be effective in the treatment of diabetic neuropathy, nor that a statin component would even contribute to the treatment of diabetic neuropathy when combined with an insulin sensitivity enhanser. In contrast, applicants have demonstrated the effectiveness of the Agent itself in the treatment of diabetic neuropathy, and all of the present claims (including the rejected claims) are directed toward applicants' discovery – the administration of an effective amount of the Agent for the treatment of diabetic neuropathy, whether or not in combination with another drug used for treating diabetes or the complications of diabetes.

It is therefore submitted Ikeda does not teach or suggest, or otherwise render obvious, the invention presently claimed in the rejected claims. Accordingly, it is respectfully requested that the rejection be with withdrawn and that the rejected claims be allowed as well as already allowed claims 22 and 42.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Director is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully Submitted,
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